

Page 1 of 2

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1505-EAQ-E TCEQ ID: RN104347141 CASE NO.: 34639
RESPONDENT NAME: SOHO Retail, Ltd.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Hardy Oaks Stone Oak Retail, located at the northwest corner of Stone Oak Parkway and Hardy Oaks Boulevard, Bexar County</p> <p>TYPE OF OPERATION: Construction site for a sewer collection system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on February 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Greg Mann, Manager, SOHO Retail, Ltd., 8000 Interstate Highway 10 West, Suite 200, San Antonio, Texas 78230 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 2, 2007</p> <p>Date of NOV/NOE Relating to this Case: August 23, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failed to obtain approval of an Edwards Aquifer protection plan prior to conducting a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed evidence of ongoing development on the Site, including clearing and heavy equipment on approximately 0.43 acres [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$3,900</p> <p>Total Deferred: \$780 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$3,120</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on August 14, 2007, the Respondent received approval of an Edwards Aquifer protection plan for the Site.</p>

Additional ID No(s): Edwards Aquifer Registration 13-04072201A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	3-Sep-2007	Screening	14-Sep-2007	EPA Due	
	PCW	14-Sep-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	SOHO Retail, Ltd.		
Reg. Ent. Ref. No.	RN104347141		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34639	No. of Violations	1
Docket No.	2007-1505-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Lynley Doyen
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement Subtotals 2, 3, & 7 Notes Culpability EnhancementSubtotal 4 Notes Good Faith Effort to Comply ReductionSubtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

Total EB Amounts	\$8	0% Enhancement*
Approx. Cost of Compliance	\$5,000	*Capped at the Total EB \$ Amount

Subtotal 6

SUM OF SUBTOTALS 1-7

Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

DEFERRAL

 ReductionAdjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 14-Sep-2007

Docket No. 2007-1505-EAQ-E

PCW

Respondent SOHO Retail, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 34639

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104347141

Media [Statute] Edwards Aquifer

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

The penalty is reduced due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 14-Sep-2007 Respondent SOHO Retail, Ltd. Case ID No. 34639 Reg. Ent. Reference No. RN104347141 Media [Statute] Edwards Aquifer Enf. Coordinator Lynley Doyen Violation Number <input type="text" value="1"/> Rule Cite(s) <input style="width: 100%;" type="text" value="30 Tex. Admin. Code § 213.4(a)(1)"/> Violation Description <input style="width: 100%; height: 80px;" type="text" value="Failed to obtain approval of an Edwards Aquifer protection plan prior to conducting a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed evidence of ongoing development on the Site, including clearing and heavy equipment on approximately 0.43 acres."/>	Docket No. 2007-1505-EAQ-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 26, 2007</i>																				
Base Penalty <input style="width: 100px;" type="text" value="\$10,000"/>																					
>> Environmental, Property and Human Health Matrix																					
<table border="1" style="margin: auto;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Release</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td></td> <td style="text-align: center;">x</td> </tr> </table>			Harm				Major	Moderate	Minor	Release				Actual				Potential			x
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	Major	Moderate	Minor																		
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Percent <input style="width: 50px;" type="text" value="5%"/>																					
>> Programmatic Matrix																					
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	Major	Moderate	Minor																		
Falsification																					
Percent <input style="width: 50px;" type="text" value="0%"/>																					
Matrix Notes	<input style="width: 100%; height: 40px;" type="text" value="Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors."/>																				
Adjustment <input style="width: 100px;" type="text" value="\$9,500"/>																					
<input style="width: 100px;" type="text" value="\$500"/>																					
Violation Events																					
<table style="width: 100%;"> <tr> <td style="width: 40%;"> Number of Violation Events <input style="width: 50px;" type="text" value="12"/> </td> <td style="width: 20%; text-align: center;"> <input style="width: 50px;" type="text" value="12"/> </td> <td style="width: 40%;"> Number of violation days </td> </tr> </table>		Number of Violation Events <input style="width: 50px;" type="text" value="12"/>	<input style="width: 50px;" type="text" value="12"/>	Number of violation days																	
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Violation Base Penalty <input style="width: 100px;" type="text" value="\$6,000"/>																					
<input style="width: 100%; height: 40px;" type="text" value="Twelve single events are recommended from the investigation date (August 2, 2007) through the date the Edwards Aquifer protection plan was approved (August 14, 2007)."/>																					
<table style="width: 100%;"> <tr> <td style="width: 50%;">Economic Benefit (EB) for this violation</td> <td style="width: 50%;">Statutory Limit Test</td> </tr> <tr> <td> Estimated EB Amount <input style="width: 100px;" type="text" value="\$8"/> </td> <td> Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$3,900"/> </td> </tr> <tr> <td colspan="2" style="text-align: right;"> This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$3,900"/> </td> </tr> </table>		Economic Benefit (EB) for this violation	Statutory Limit Test	Estimated EB Amount <input style="width: 100px;" type="text" value="\$8"/>	Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$3,900"/>	This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$3,900"/>															
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Economic Benefit Worksheet

Respondent SOHO Retail, Ltd.

Case ID No. 34639

Reg. Ent. Reference No. RN104347141

Media Edwards Aquifer

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$5,000	2-Aug-2007	14-Aug-2007	0.0	\$8	n/a	\$8
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an Edwards Aquifer Protection Plan. Date required is the investigation date.
Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$8

Compliance History

Customer/Respondent/Owner-Operator:	CN603202300	SOHO Retail, Ltd.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN104347141	HARDY OAKS STONE OAK RETAIL	Classification: HIGH	Site Rating: 0.00
ID Number(s):	EDWARDS AQUIFER EDWARDS AQUIFER		REGISTRATION REGISTRATION	13-04072201 13-04072201A
Location:	NW CORNER OF STONE OAK PKWY & HARDY OAKS BLVD, BEXAR CO, TX			Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	September 12, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 12, 2002 to September 12, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name: Lynley Doyen	Phone: 512-239-1364			

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? WP South Acquisitions, L. L. C.
SOHO Retail, Ltd.
4. If Yes, who was/were the prior owner(s)? Wood Partners, Ltd.
5. When did the change(s) in ownership occur? 06/27/2007

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 08/27/2007 (565896)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SOHO RETAIL, LTD.
RN104347141**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1505-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding SOHO Retail, Ltd. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a construction site for a sewer collection system located at the northwest corner of Stone Oak Parkway and Hardy Oaks Boulevard in Bexar County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 28, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Nine Hundred Dollars (\$3,900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand One Hundred Twenty Dollars (\$3,120) of the administrative penalty and Seven Hundred Eighty Dollars (\$780) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on August 14, 2007, the Respondent received approval of an Edwards Aquifer protection plan for the Site.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain approval of an Edwards Aquifer protection plan prior to conducting a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on August 2, 2007. Specifically, the investigator observed evidence of ongoing development on the Site, including clearing and heavy equipment on approximately 0.43 acres.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

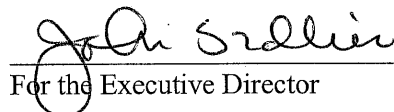
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: SOHO Retail, Ltd., Docket No. 2007-1505-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

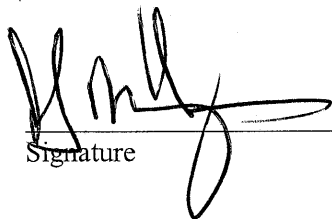
Date 1/28/2008

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date 12/4/07

GREG MANN

Name (Printed or typed)
Authorized Representative of
SOHO Retail, Ltd.

Title Manager

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

